

ENGINEERING DIRECTIVES AND STANDARDS

Volume : III Revision Date : 12/13/2006
Chapter : 1 Subject : **CONTRACT DISPUTES, AND REQUESTS FOR
ADDITIONAL COMPENSATION**
Section : 1
Directive : 28

1. PURPOSE:

The purpose of this directive is to establish notification and documentation procedures to be followed in the event of a contract dispute, and/or Contractor's submission of a Request for Additional Compensation ("RAC") as provided for in Section 105.18 of the Standard Specifications.

2. SCOPE:

This directive applies to all issues of dispute where the contractor is or will be seeking additional compensation or other contractual relief. This directive does not apply to routine E14 time charge disputes, which should be resolved in accordance with EDSM III.1.1.19.

3. POLICY:

Subsection 105.18 provides that if a Contractor deems that additional compensation may be due for work, material, delays, inefficiencies, disruptions, or other additional costs or expenses not covered in the contract, or ordered as extra work, the Contractor must notify the Project Engineer, in writing, of his intent to submit a RAC before beginning the work on which the claim is based or immediately upon encountering the conditions or effects which the contractor claims entitle him to additional compensation.

If the contractor deems that other circumstances, not usually governed by the general specifications, have resulted in damages, the contractor may submit a RAC. These circumstances may be delays resulting from action or inaction of the Department, plan errors, disagreements with the Department's interpretation of the plans and specifications or other causes.

4. NOTIFICATION:

The Contractor's notification of dispute must be initially filed with the Project Engineer so that a detailed record of contract activities and costs associated with the dispute can be established contemporaneously with the actions taken to resolve the issue. The attached form titled "Contractor's Notification of Contract Dispute" should be used by the Contractor to immediately notify the Project Engineer of disputed issues and his intent to submit a RAC. A copy of the notification should be sent by the Contractor to the District Construction Engineer, the DOTD Chief, Construction Division, and the DOTD Chief Engineer.

5. DISPUTE RESOLUTION PROCEDURE

A. District Review

Upon notification, the Project Engineer shall immediately (within two weeks) address the disputed issue. If after review by the Project Engineer and the District Construction Engineer (District Area Engineer), a resolution is reached on the issue within one month, a Change Order should be prepared by the Project Engineer and submitted through channels for consideration.

If a resolution is reached on a portion of the RAC, a change order can be prepared which addresses the agreed upon part and the contractor can reserve his right to continue to recover addition compensation on the remaining parts.

If not resolved at the District level within one month, the Project Engineer shall prepare a written factual analysis of the dispute with supporting documentation, including all actions taken at the District level to resolve the issue. This factual analysis shall be submitted to the DOTD Chief, Construction Division. The Contractor shall then be notified that the dispute has been transferred from the District to the Headquarters Construction Division for resolution.

If a Contractor's RAC is anticipated, the Project Engineer shall immediately keep a detailed diary relating to the dispute, including actions taken and personnel, equipment, and other resources utilized by the Contractor in connection with the disputed issue.

B. Headquarters Review

The Chief, Construction Division will assign the dispute to a Claims Manager for a detailed analysis, including recommendations, to be completed within one month. After reviewing his findings and recommendations with the DOTD Chief Engineer, the DOTD Chief, Construction Division will immediately notify the Contractor, in writing, of the Department's decision relative to the disputed issue. This decision may be appealed by the Contractor directly to the DOTD Chief Engineer, who can initiate any additional review or investigation he deems necessary to amicably resolve the disputed issue.

Upon amicable resolution of the dispute, a Change Order (if needed) shall be initiated by the Project Engineer within one week after notification. When the DOTD Chief Engineer concludes that the Department has exhausted all efforts to amicably resolve the dispute, he shall prepare a written transfer of the disputed issue to the DOTD Legal Section for judicial resolution.

5. REQUEST FOR ADDITIONAL COMPENSATION:

After submitting the "Contractor's Notification of Contract Dispute" form, including cost estimates as appropriate, the Contractor may subsequently submit a formal Request for Additional Compensation ("RAC") at any time. The RAC shall be submitted to the Project Engineer and the DOTD Chief, Construction Division, and shall generally consist of a statement or schedule presenting:

- all work activities associated with the disputed issue;
- the impact on the project schedule, if any, related to the disputed issue;
- all labor, equipment, material, subcontractor, and other direct or indirect cost elements associated with each work activity identified above; and
- the dollar amount and method of computation used for each individual cost element identified above
- documentation supporting each fact, assertion, cost, or delay identified in the RAC shall be provided to the Department at the time of the submission of the RAC

The statement or schedule shall be certified and sworn under oath by the Contractor to be true and correct as to all facts, records, representations and amounts claimed therein.

A. Minimum RAC Supporting Documentation

1) Detail Tabulations

The quantities, expenses, costs, and/or rates used to price any element of the RAC shall be tabulated in such detail that the statement or schedule may be quantified without producing the books and records from which the pertinent data was taken.

2) Computational Methods

The statement or schedule shall include a complete description of the computational methods used to arrive at the total amount presented for each cost element, with a reference to each document, ledger, or accounting book of record used to substantiate the amounts presented.

3) Overhead

Where the statement or schedule includes a claim for jobsite overhead (fixed time related project support costs), or home office overhead (general or administrative expenses), based upon indirect cost allocations, the Contractor shall itemize such expenses for the period involved, and shall show the accounting method or principle upon which the allocations were made. The Contractor shall submit a copy of their audited or reviewed annual financial statements, including footnotes and supplemental schedules, for each fiscal year associated with claimed jobsite or home office overhead.

4) Machinery or Equipment

Where the statement or schedule includes an item for machinery or equipment expense, the Contractor shall list the type, class, capacity, or other identifying description of each major piece of machinery or equipment involved and date of purchase, acquisition cost, and internal operating and ownership charge rates of each item. Allowable equipment reimbursement rates will be based on EDSM III.1.1.27 "Equipment Rental Rates".

5) Bid Price Estimate Work papers

The Contractor shall make available for Department examination all original bid price estimate work papers including labor and equipment loading schedules, significant material price quotes, prospective subcontractor quotes, and jobsite support labor and equipment costs. The bid price estimate work papers shall also include the Contractor's direct cost markup for home office overhead and profits utilized on the project, and the resulting contract unit prices.

6) Books and records

The Contractor shall make available for Department examination all books and records, or any other part thereof upon which the claimed damage amounts are based. These records would include daily activity progress reports, accounting ledgers, journals, payroll distribution reports, equipment utilization records, original invoices, vouchers, checks, and other records and documents needed to verify the amount claimed, or to determine the basis upon which the claim was computed.

7) Names and Addresses

The Contractor shall provide the address where all books and records may be examined by the Department, together with the name and address of the Contractor's representative who prepared the RAC and who will be available to furnish information regarding such books and records to the Department.

B. Witness Identification

If the Contractor cannot adequately document and substantiate amounts claimed in the RAC through use of contemporaneous company documents and records, and/or intends to utilize a factual or expert witnesses to support claimed amounts:

- 1) The Contractor shall furnish to the Department a statement specifying by what means or theories, and the witnesses through whom the Contractor intends to prove the amount claimed.
- 2) Contractor shall furnish the Department the prospective witnesses' names, addresses and occupations, and the subject or subjects to which the witnesses' statements will be directed.

- 3) If the Department deems it necessary that oral statements be received from prospective witnesses in order to properly evaluate the RAC, the Department will notify the Contractor of a date on which the oral statements sought to be submitted will be received under oath and transcribed for evaluation

7. OTHER ISSUANCES AFFECTED:

All memoranda or instructions issued heretofore in conflict with this directive are hereby rescinded.

8. EFFECTIVE DATE:

This directive will become effective immediately upon distribution and receipt.

WILLIAM H. TEMPLE, P.E.
CHIEF ENGINEER

CONTRACTOR'S NOTIFICATION OF CONTRACT DISPUTE
TO
STATE OF LOUISIANA – DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Prepare five copies

STATE PROJECT NUMBER	FEDERAL AID PROJECT NUMBER
PROJECT NAME	
ROUTE NUMBER	PARISH

Describe fully the reason for this notice and remedy sought; use additional pages as necessary.

Date of Dispute	Estimate the date within which the DOTD must respond to this notice to minimize impact to contractor.	Date of Notice
Do you anticipate filing a request for additional compensation? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Notifier's Company Name and Mailing Address		
Name of Notifier's Representative	Telephone Number	Signature of Notifier's Representative

DISTRIBUTION

- Original – Project Engineer
- Copy – District Administrator
- Copy – DOTD Chief, Construction Division
- Copy – DOTD Chief Engineer
- Copy – Retain for your records

Date received by Project Engineer
